Joseph Saunders

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Washington, DC

Zachary M. Schrag, Interviewer

Transcribed by Douglas Wilson

Schrag: Zachary Schrag is interviewing Mr. Joseph Saunders. It is Thursday, November 9, 2000, at 10:20 in the morning. We are in his home on Yuma Street in Washington, D.C.

I'd like to start with a bit of your background. Where did you grow up? What was your profession?

Saunders: I was born in Brooklyn, New York, and my family came here a few months after my birth. I therefore grew up, went to school locally here. My family lived in the latter part of the -- while I was still at home -- on 39th Street down near Massachusetts Avenue. I went to local high school, went to Catholic University and pursued an economics and was awarded an economics degree. I went to Georgetown Law School where I got a degree, an LLB, in 1948.

I worked for a number of years for the Federal Bureau of Investigation, largely in clerical-type

work. When I got my law degree, I joined the antitrust division of the Department of Justice as an attorney. I became a section chief in the antitrust division in 1960. I was with the antitrust division until 1977 and then became an administrative law judge at the Civil Aeronautics Board. In my last two or three years, just before the board was abolished as part of the deregulation effort, I was the chief administrative law judge.

Schrag: So at the time of the biggest [unclear] controversy, which was early 70s, you were at Justice in antitrust?

Saunders: Yes.

Schrag: When did you move to Yuma Street?

Saunders: In 1960.

Schrag: In 1960. You had grown up not too far away and then you had stayed in this area.

Saunders: Yes. We had lived down on the other side of town until 1960.

Schrag: Where was that?

Saunders: Down past Bolling Air Force Base.

Schrag: What brought you back to this neighborhood?

Saunders: The need of space for a growing family and because the living conditions here were -- the neighborhood and so forth -- was more conducive to bringing up the family as we thought it should be brought up.

Schrag: What would you say is the name of this neighborhood? Would you say this is part of Cleveland Park?

Saunders: It's called North Cleveland Park. It's called that in connection with the Advisory Neighborhood Commissions. So we're almost in the middle of it. It goes down perhaps to Upton Street and up to Mount Pleasant maybe.

Schrag: One thing I know that happens -- well, let's see. This is actually kind of important because one of the stories here is the Northwest Freeway controversy, which comes in '59, '60, around the time you were moving in. Let me ask first, how would you describe this neighborhood in 1960? Does it look pretty much the same as it does now?

Saunders: It does look fairly much the same now, more business development. The large building up at

4000, I guess, wasn’t there. As you go to the District line, [there are] a number of large buildings which didn’t exist in 1960.

Schrag: Along Connecticut and Wisconsin [Avenues].

Saunders: Along Wisconsin, yes. I guess to some extent that’s been spurred by the Metro.

Schrag: But in terms of the immediate neighborhood, single-family houses, a lot of them built in the 1920s?

Saunders: Yes. This house, for example, was built in 1928.

Schrag: That’s, I guess, pretty similar to a little further south.

Saunders: Yes. Down to Massachusetts Avenue, although in different areas some of the houses are bigger and more expensive and more valuable than in others.

Schrag: Were you aware of the Northwest Freeway plans?

Saunders: I read it in the newspapers.

Schrag: Were you active at all in that controversy?

Saunders: No.

Schrag: Had you -- one of my questions, had you had any previous experience as an activist prior to Metro coming?

Saunders: No, not really.

Schrag: When did you become aware that there were plans to bring rapid transit to this area?

Saunders: Actually, I guess there must have been some stories in the newspapers, but I became aware of it one day in a barber shop while I was waiting to get my hair cut. There was a brochure or a folder or something, I think probably maybe distributed by Metro, WMATA [Washington Metropolitan Area Transit Authority]. There was the information and the proposed line of subway. That sort of sparked my interest.

Schrag: Do you remember how elaborate that map was or what year that was?

Saunders: That would have been shortly -- within six months or a year before we started going at this with hammer and tongs.

Schrag: So that would have been late 60s.

Saunders: Yes. That's really what got my interest up, because I had not -- if there ever had been a diagram or a map published, I guess I didn't see it. Perhaps it was there and I just missed it.

Schrag: There were plans, but not this far. That is, there were earlier plans going up to Van Ness and that was the terminal point. But certainly in the late 60s, WMATA is created and there are broader plans, so that makes sense. What was your reaction to seeing that map?

Saunders: Naturally, it was one of concern. I immediately wanted to know just what was being proposed and how the decisions had been made, were going to be made, that would affect our neighborhood and particularly my property.

Schrag: How did you go about doing that?

Saunders: I don't think I did anything, I recall now, until the notice of hearing for the A9A section [phonetic] was published, however it came to my attention. But at that point -- I don't remember exactly. But certainly by that time I was very much interested and concerned.

Schrag: Had you talked to other people about it?

Saunders: As more information came to us, yes, to my neighbors.

Schrag: What did they think? Were they [unclear]?

Saunders: First of all, it was uncertain just how this was going to affect us. It was clear that we had not been consulted in that initial planning. As a matter of fact, the planning had gone fairly far in that stage. That rankled us, to put it mildly. At that point, we began to get -- we started getting very serious about learning what was going on and so on.

Schrag: You get the notice of hearing, and is that sort of the first time that you have direct contact with WMATA?

Saunders: Yes. After the notice of hearing -- it could even have been after the hearing, but I'm more inclined to think it was prior to the hearing -- I went down to WMATA down at L'Enfant Plaza and asked to see the materials that existed with respect to the plan for a subway on Yuma Street.

Schrag: How were you received?

Saunders: I talked to whoever when I made inquiries. I remember it was a woman. I don't remember the

name of the unit or whatever of WMATA. She was courteous and got out the materials. Part of the problem was I didn't know exactly what form the materials would take, and therefore maybe didn't ask for them in a way that was clear and unmistakable as to what I wanted. I was at that point just getting educated. But the clerical employee who got some materials out for me was courteous and helpful.

Schrag: Then you went to the hearing?

Saunders: Oh, yes, I went to the hearing. I do not have a distinct recollection as to the order of these things, but, yes, I was at the hearing.

Schrag: How did that go? How many people showed up? Where was it held?

Saunders: It was at one of the schools, I think, in the area. It was well-attended. Obviously, if anybody is going to be testifying on behalf of WMATA, with my legal experience I would know that they probably carefully prepared their testimony and had gone over it. At the hearing, I don't know whether I even asked a question, because at

that point I was still warming up to the situation.

Schrag: Did you have a sense -- when you get this map that the subway is coming, in some senses there is good and bad. That is, there is the threat that it's going to disrupt things, reduce property values, [but] also the opportunity that you'll be able to walk to a station. Did both of those enter? Did you consider this something you might actually use to get to work?

Saunders: Well, it was pretty clear, particularly as I got more and more into it, that there was going to be a subway in this neighborhood. It was good in the sense that it was reasonably -- the stations were reasonably close, that it would be useful. At the same time, because they had put down on the charts, diagrams, maps, that it was going to come under Yuma Street, that raised questions as to what its impact would be. We didn't see it being good for us while any construction was going on, either under our immediate street or nearby.

Schrag: It sounds like you were still gathering information when you first went to the hearings. When did you become more of an opponent? We're sort of leading up to the litigation.

Saunders: I went back down to WMATA -- Metro we used to call it for short -- now somewhat educated by that hearing. I went back to that same source, the woman with whom I had ended up by reference somewhere down there. I began to ask now more specifically for information and documents because I had a little bit better feel for what this was all about. In the information that I obtained, documentary information that I obtained, I was -- I don't know what verb to use here -- but I was shocked, I guess, and certainly very, very angered by what I found in the documents, which were at odds with what some of the people who testified for Metro at the hearing had said there.

Schrag: Anything specific?

Saunders: They particularly said the location of stations and tunnels and -- what was the word, term of art, structures -- transit facilities or

something. Anyway, I found out that they had said falsely at the hearing that they did not know where they were going to be located. The information in the files told me that they had already decided that. It was at that point that my dander got up and I became, therefore, very suspicious and Doubting Thomas, expecting to be shown very precisely with respect to anything further in my dealings with them.

Schrag: That's very interesting. Had you had similar experience on the job? If your job was to sort of look suspiciously at big companies --

Saunders: If a company under investigation -- I also had a year of experience as a lawyer during the Korean War investigating and prosecuting what was called "black marketeers," the people not having proper government permission to use what were called controlled materials. It was always -- early on I knew that I should probably double-check stories and statements that were given me, not just take them at face value. So when it came to Metro, I found myself following that same practice.

Schrag: Had there been any -- I guess the Korean War story is actually quite interesting that you would make that association.

Saunders: In other words, lawyers would come in frequently, regularly, on behalf of their clients. If I found they were dissembling, they were not telling me the truth, then it made it very difficult. I won't say I was not open to being educated if I had come to a wrong preliminary conclusion. But a person who dissembled, who lied, I didn't warm to them very well.

Schrag: So just to make sure I have this right, when you went to the hearing they said, "We'll have a station somewhere around the Van Ness area, somewhere around the Tenley area, and we don't know how we're going to connect them."

Saunders: That aspect of it is -- I haven't looked at these in a while -- in the complaint. Let me just say preliminarily, this case was brought by me on behalf of my wife and I. Being a government lawyer, I could not represent private parties, even in litigation here which the government was partially, you might say, involved. So I

appeared here by complaint on behalf of my wife and I. Other neighbors in the neighborhood were very much concerned about this. As it turns out, I did most of the digging of information which I made available.

There was another lawyer in the neighborhood, and we discussed it. He said, “You really, I think, have got a handle on this. You’re active in it. I take it you’re in it for the long haul on it.” I said, “I sure am.” He said, “Well, why don’t I represent the other neighbors whom you cannot represent? But I’m expecting, since you’ve already done a lot of work on this and you seem to be on top of it, that you’ll probably continue in that role. But we’ll, in effect, be joint plaintiffs.” But the documents -- and in oral argument only one attorney from this side could argue, in the courtroom, that is. I would usually make those oral arguments. So I just say that in passing.

Now, “Injury to plaintiffs. Plaintiffs own and occupy valuable and attractive residential property in the so-called North Cleveland Park area of Washington, the District of Columbia.

This residential area is noted for its substantial handsome homes, its attractive and well-cared-for lawns and gardens, its quiet tree-lined streets, its salubrious environment, and its aesthetically pleasing surroundings. Yuma Street enjoys all of these attributes. Both from the standpoint of protecting their physical and mental health and well-being, and from the standpoint of protecting the value of their property, plaintiffs have an interest in avoiding any degradation of the environmental and aesthetic conditions which currently prevail on Yuma Street.

"Defendant has adopted an alleged mass transit plan for the A9A route, which will involve the construction of two subway tunnels on virtually the entire length of Yuma Street between Connecticut and Wisconsin Avenues. This was done without any environmental impact analysis by the Authority, although evidence in the record raises substantial questions with respect to transmission of noise and vibrations from the tunnels to homes on Yuma Street, and indicates alternative route alignments which would affect a

far lesser number of residential properties. In addition, plaintiffs have only recently learned that the Authority plans to make physical changes on the surface of this residential neighborhood which will permanently affect the environmental and aesthetic qualities now prevailing. Under the Authority's alleged mass transit plan, there would be constructed in the very midst of homes on Yuma Street large fan shafts and vent shafts, surface gratings, and emergency access facilities connected to the tunnels. The construction of these facilities, which the Authority planning official has testified would cause 'some disruption, both temporary and permanent,' will involve repeated blasting and excavation and the closing of portions of Yuma Street during the construction. It will result in permanent installations of massive incongruous structures, i.e., metal gratings up to fifty feet in length, in the place of trees and lawn areas in front of homes and close to other homes and will create open conduits for the transmission of noise from the subway tunnels to the otherwise tranquil surroundings of Yuma Street. Except possibly for

station access points, the most prominent features of the subway system visible above ground are fan and vent shafts, surface gratings, and emergency access facilities.

"The 'design and location of such facilities' is required to be included in a proposed mass transit plan. The notice of public hearing concerning the proposed A9A route falsely stated that 'the location of these facilities cannot presently be determined.' At the hearing, an official of the Authority reiterated that quote: 'the location of vent shafts had not yet been determined.' Both of these statements were false, because the Authority's chief of engineering and operations had theretofore approved plans showing the sites of such facilities. Several such sites were amid homes on Yuma Street.

"As a result of these falsehoods and the withholding by the Authority of relevant information, plaintiffs were denied an opportunity to be heard with respect to the Authority's proposals for such facilities and their location or to offer alternative proposals.

Plaintiffs were thus unable to secure the consideration which the compact" -- the Maryland, DC, and Virginia compact -- "the compact requires the Authority to give to the views of all persons who may be affected by a mass transit plan and to the environmental and aesthetic impact of such a plan. Plaintiffs invoke the jurisdiction of this court and request injunctive relief to preclude any degradation of their residential neighborhood," and so on.

That, in these two or three paragraphs, reduces to a nutshell the problem. Metro just didn't shoot squarely.

Schrag: So you were asking for two things. First there was sort of a process demand that they hold public hearings --

Saunders: Well, they had held them.

Schrag: To hold honest public hearings with full information, that they consider alternatives. You used the term "environmental impact" in there, so you were making a NEPA claim as well.

Saunders: Yes.

Schrag: So there are process demands. Then the end result, as I understand it, is you would like an alternative plan.

Saunders: It would have been premature for me to say that a route under Albermarle Street rather than here was the only thing that could logically be considered. We never took that position. We just said that they had not considered -- first of all, they misrepresented what the situation was with respect to Yuma Street. And they had misrepresented that there were other alternatives that they had not explored under NEPA and their obligations under that act. They liked Yuma Street and that's the way they wanted it.

Schrag: What exactly were the documents? You had seen actual blueprints showing pin-pointed vent shafts? What had you seen when you said that the engineers knew? [Tape interruption].

Saunders: We're continuing. "We invoke the jurisdiction of the court and request injunctive relief to preclude any degradation of their residential neighborhood by the Authority unless and until the Authority, sufficient to our needs" -- at

that time were simply to get the thing back to hearing, in which much more would be ventilated than was possible in the first hearing. Very frankly, we hoped that we could have some honest-to-goodness discussions with the staff and Authority officials to be fully informed and to have answers to our questions and not just to take it as WMATA dished it out.

This became, as time went by, almost a -- I don't know. I was very, very burned with the dishonesty and the refusal of Metro officials to -- they had their plans, and that's what they wanted. Whatever we might say, they would make some sort of a rejoinder in meetings, make some sort of a rejoinder. It was perfectly clear all along that they wanted Yuma Street. They didn't even make the slightest concession. One which ultimately they made after two or more years -- I've forgotten the time frames here now -- down in the next block at Reno Road and Yuma Street on the southwest corner, hidden behind hedges, is the surface openings to an emergency exit and a fan. I'm not sure whether it's an intake or exhale. At the corner of 38th and Yuma on the

northwest corner, out of sight, because it's on a hill, bluff, is another vent or fan shaft, which years after we might well have been ready to say, "Okay, if you're going to do this, there are other things too." We had the posture, because they weren't doing a damn thing for us. We had to take a tough position.

Ultimately -- one of the other problems we had. We had been downtown and we had seen the cut-and-cover method of construction they were doing downtown. They had big planks on the streets and so forth. The area was constantly muddy. The dirt was tracked by vehicles as well as whatever. Just to have existed in that kind of an environment for, say, two years, was totally unwelcome. Eventually the Authority -- well, I think even from the beginning they had said they were not going to do cut-and-covers because they're a hundred feet down. They were not going to do that here, which was helpful. But we didn't know how much we could trust them.

Schrag: Interesting. So when they said that, you thought there might actually be --

Saunders: I just can’t -- let me tell you a couple of the incidents, because they’re interesting. After I had pretty much concluded that the only way they’re going to listen to us is to take them into court and get them in front of a federal judge who they better not tamper with the facts on, I went back down one day to get some more information. I figured my case would be improved a little if I got this. I’ve forgotten what it was now.

Schrag: If I could just ask one question. Where was your office at this time? Were you in the Justice Department?

Saunders: Yes.

Schrag: So you could go over during your lunch hour and pick up some more documents?

Saunders: Yes. I mean, these things happen -- a trip down there, I think I made three or four, including one some years later when finally his eminence, Jackson Graham, was convinced by his lawyer that he should talk to us. Anyway, I’ll get to that later.

Schrag: You went down to get some documents for the [unclear].

Saunders: I went down to get some documents, review some more documents. I was sitting there. There was sort of like a large area like a hall and then desks for the personnel who were there. There was a desk at which they had seated me and bringing these documents. A lawyer who I had several contacts with and who happened to be a member of the legal staff --

Schrag: Do you remember his name?

Saunders: Pete Young. He came by and he saw me there this day. He said, “What are you doing here?” I said, “I’m getting ready to sue you.” He said, “You are?” I said, “Yes.” He said, “Why? On what basis?” I said, “On the basis that the Authority has dissembled and misrepresented the facts of its work to this date to the public.” We talked. So he said, “Gee.” He walked away. In about five minutes he came back. I don’t know whether what he said as to the meeting was true -- it could have been, because things were -- he said, “We’re having a meeting, as it turns out,

now at somebody's office. I told them that I ran into you and that you're here and you're still on our tail," or something like that. He said, "Do you have a few minutes so you come down there?" I thought anything I can learn from them, the better it is for me. So I said, "Okay."

I went down there and there were engineers and [unclear]. He introduced them, people I had seen at the hearings and maybe some others as well. There must have been eight or ten of their staff in the room. So they said, "We understand you're down here going through files." I said, "I am." He said, "What's up?" I said, "I'm preparing a lawsuit." Somebody or other snickered and said, "Lawsuit? How far do you think you're going to get with that?" I said, "Well, it's going to depend upon what kind of a case I can make. You have the obligation to give me the information that I ask for, and that's why I'm down here, to make sure I've got solid information that will support a lawsuit."

I think it was Pfanstiehl, who was a public relations [unclear] -- he said, "This is one of the largest public works projects in the country.

You think a judge is going to block this tremendous project because of somebody on Yuma Street being upset about it?" I don't remember all the things, but I remember a few things. On that occasion I answered. I said, "Mr. Pfanstiehl, you have got this figured all wrong if you're saying that you think a federal judge wouldn't block it. Let me tell you, I may not get an injunction from the district court, but I will appeal it to the District of Columbia Circuit Court of Appeals. And let me remind you that the Three Sisters Islands are an aborted highway project that is sitting down there in the river. The Calvert Creek Nuclear Plant is a hole in the ground down on Chesapeake Bay. And the Alaska pipeline is a bunch of pipes sitting up there rusting at Prudhoe Bay. Why? Because this court of appeals was not going to stand for actions which were inconsistent with the National Environmental Protection Act. So I am resting my trust in that court of appeals. I may get an injunction at the district court."

I was, frankly, at this point -- because they had so alienated me -- I figured it's just as well he

didn’t grant the injunction and let me get it from the court of appeals, because then they’d be six months or a year further along and everything would have to come to a screeching halt then. I said the only way they’re going to listen to us and take us seriously is if we can show that the law is on our side and we can apply it. So they smiled. They didn’t ridicule me.

It was just so -- the outcome was even better than I hoped. The case went before District Court Judge [Aubrey E.] Robinson [Jr.], and he granted a partial appeal -- I mean, a partial injunction -- and required them to go back to hearing on some aspects of it and meanwhile to hold off any work to implement the plan. To show that we meant business, we immediately appealed Judge Robinson’s part of his order in which he denied us all the relief that we wanted. I forget what some of these things were now. We went in, and it’s a tough mountain to climb to get an injunction pending appeal. Courts do not usually --

Schrag: An injunction for the part you hadn’t already gotten the injunction for.

Saunders: That's right. We asked for an injunction pending appeal. I didn't think our chances were too good, because the judge had given us something. Anyway, they granted the injunction pending appeal. Now the Metro is brought to a complete halt on anything out here until the appeal could be argued. It was argued in due course, maybe even on expedited schedule. The court upheld Judge Robinson as to the injunction he had granted and reversed him for not having granted this [unclear]. So the whole thing was thrown back to Judge Robinson.

I forget now some of the details in here, whether the Authority on its own figured that they were in deep doo-doo and they ought to do something. So they may have -- no, I guess they were in trouble, because, as a result of the appeal, they had to conduct the environmental assessment to meet the requirements. So they were thrown back to almost the beginning, you might say. They hired consultants. Here's the environmental study. But there were people who were hired to put that together.

Schrag: Yes. I'm told that it takes at least eight months to do something like this.

Saunders: I don't know.

Schrag: Did you feel that these folks would be honest? This was Wallace, McHarg, which did several of these around the --

Saunders: Very frankly, we were doing this on a shoestring. We did not -- it would have been very expensive for us to have hired a consultant even just to review it to tell us whether this thing would pass muster in their view.

You asked a question earlier, and I'm going to get to that now in this connection. There were other residents on Yuma Street on the other side of Reno Road. We had had meetings with them in the early stages here, and they were just as concerned and upset as we were, maybe even more so because the tunnels there would be not as deep underground as they are here. But one man, Murray Strassberg, worked for the navy. I don't know what the name of the agency was, but with respect to suppression of noises and so forth on submarines and that sort of thing. So he is, in

many respects -- we called him, and I think we did it justifiably -- an expert in that area. The people down there though -- they hired a lawyer. They didn't join with the others here. We thought they were a loose cannon, because the more we talked with them, the more we felt that they were not keeping their eye on the ball, that they tended to -- rather than a crisp, hard-hitting, direct, effective presentation down at court, they would say, "Yes, they did do their job. These people are absolutely right," and so on and so forth. They, it just seemed to me and my colleague, the lawyer -- because our people pretty much went along --

Schrag: Just to clarify -- there was another lawyer who was representing your neighbors who was on this side of Reno Road, west of Reno Road.

Saunders: Yes.

Schrag: What was his name?

Saunders: Solstein. And a young man in his firm by the name of Howard appeared on many of these documents. No, I'm looking at the one that I filed limited to my wife and myself.

Schrag: So there are two lawsuits on this side.

Saunders: No. Well, yes, two lawsuits.

Schrag: And then a third on the other?

Saunders: One, my wife and I, and the other with numerous parties.

Schrag: Two groups of plaintiffs, I should say. Then on the other side they sort of form another group of plaintiffs?

Saunders: That’s right.

Schrag: So there are three different groups on Yuma Street with this sort of division of strategy.

Saunders: Exactly. Meanwhile, they had -- I don’t know the connection. You mentioned her name.

Schrag: Patricia Roberts Harris.

Saunders: Yes.

Schrag: Who later runs for mayor and now has a stamp [unclear].

Saunders: I was trying to be helpful to them, but on the other hand, I had a vision of the way to proceed as we come, and Bob Solstein, keeping it -- keep it simple. So we did not join them. I don’t

even know what Patricia Roberts Harris did. She was acting as their attorney, as I recall.

Schrag: That's right. They hired her. I don't know if she was paid or was doing it pro bono.

Saunders: I don't know. That's right. And when I saw her papers I was glad that we had retained our own independence, because she was thrown out, that case was thrown out.

Schrag: This is what I had not understood, which is why some of those newspaper stories were confusing, because they said one case was thrown out and another one was still going on. Was she not precise enough in her demands, do you think?

Saunders: Well, she had one good point, which we made. I don't know who filed first. Maybe she was borrowing from us. Maybe we borrowed from her, although we had done a lot of our own work, to be sure. There had been case down on Connecticut Avenue early on in which a store called the Bootery, a shoe store, had gone into court and gotten an injunction --

Saunders: I don’t remember the details of the case, but they got an injunction requiring more comprehensive public hearings and so forth. That was in the early stages of it downtown, you see. The court in that case had found the Authority -- one of the other reasons that I stated was the inadequacy of the hearing on this route, A9A route. “The A9A route failed to comply with the compact” -- you’ve probably seen this, haven’t you? “The Bootery decree or regulations adopted by the Authority in the following respects, each of which renders the mass transit plan for that route invalid.”

Schrag: This is your brief that you’re reading.

Saunders: This is the complaint. “The relief sought by the complaint is similar to that ordered by this court [unclear] judge in 1970 in The Bootery v. Washington Metropolitan Area. That case involved the rights of business which might be displaced by subway construction in the downtown area to be heard in the course of the planning process. Here the rights of homeowners in a residential neighborhood which will be invaded by the subway

are at stake." We included that as a further ground. Neither the district court nor the court of appeals really paid much attention to that. I thought it was basically a controlling case. It was in this district, circuit, and its facts were -- well, it was a business, and so on. I thought they were alike, similar, almost identical, except for the fact that one was a business and the other was homeowners. They relied heavily on that case, and their case came up before a different judge, and they got nowhere.

Schrag: I'm now trying to remember the details of the Bootery case. My impression was that what that established was that rather than having, say, one big public hearing per route, they would actually have to do the segment-by-segment hearings.

Saunders: That may well be.

Schrag: So the fact that you even had a public hearing on A009, or whatever it was, was already a function of that Bootery case.

Saunders: That may be so.

Schrag: It may not have interpreted it quite as widely as you would have liked, but had it not been for the

Bootery, you wouldn't have even made it into court quite possibly. I'm not a lawyer.

Saunders: I cited that case, but the court just didn't pay attention to it in our case, because we had other grounds which I guess they felt were much stronger.

Schrag: Which was NEPA? What was the real strength of your case?

Saunders: The strength of our case, number one, was that they had falsely -- we pointed out how they had misrepresented to the public in that notice of hearing and in the papers supporting it that were circulated at that time, that they had misrepresented what the stage of the planning was and what the plan was.

Schrag: So did you -- I guess I asked you before -- were you able to introduce actual engineering drawings showing where specific --

Saunders: Our case --

Schrag: How did you feel that they were --

Saunders: Our case, in effect, was at the threshold and said right from ab initio they had been

misrepresenting what they had done. In notifying the public about this hearing, the notice of hearing, they said, “We don’t know where we’re going to put those things,” and they did.

Schrag: How could you poke -- you had maps from them.

Saunders: We had maps showing them.

Schrag: That you had picked up at L’Enfant Plaza.

Saunders: Yes. So that’s what -- I went through here looking for the decision. Neither of the decisions -- the one by Robinson which was cross appealed, and the one by the circuit court -- I don’t know where they are. Those two documents are missing. So it was really that threshold question.

Then we got into further questions as to if -- this came about, I think, after -- it would logically have come about after they were told to go back and rework this and tell the public everything that you are doing and what you considered. And you have not, according to what the court said, you have not considered other alternatives. You have to consider these other alternatives and so forth and so on. Meanwhile,

the clock is running on all of this.

I agreed, from discussions with the WMATA counsel -- or at least the ones I was talking to, which were not the general general counsel but some outside counsel as well as inside counsel -- that the lawyers felt they weren't being listened to by the operating people. The operating people were the ones who were getting WMATA into trouble, because they weren't listening to their attorneys. I take it that the attorneys -- anyway, eventually, I'm sure the attorneys were saying, "I told you so."

They may have done that in a very -- I'm going to skip way back, come forward, because this probably explains why we got into the contretemps that we did. The explanation is Jackson Graham. He, as you probably know, was a former general, army engineer. I don't know where he was stationed or [unclear]. He thought he was still bossing troops around and, of course, in most of his experience, I guess, the group didn't have to comply with certain legal requirements or he didn't have to. So he just chafed that this project was not going forward as quickly. I came

across a clipping -- you may have seen it, and I don’t know where it appeared -- in which it was written up that he and his wife would get in his jeep and ride through the tunnels which were already under construction and so forth and so on. That was his baby. He had a vision there. The trouble was he never stepped back far enough to see that there were other considerations which had to be taken into account. [Tape interruption].

Schrag: Okay. We’re resuming.

Saunders: I can’t place the date of this, but it was after a lot of things had happened. We still were trying to get some resolution that we could live with and that would not send the red line over to Georgia Avenue and back. I’m exaggerating. I think we were realistic. We knew there were limits within which we could operate and get results. Of course, one of the ways we were operating was to invoke the jurisdiction of the courts to make certain and that they were complying with all necessary requirements. So we had discussions with the staff attorneys

there, and they had outside counsel that they hired for this case, too -- I think for this case alone. We had discussions with them. I kept getting vibes that they thought we were not being totally unreasonable, that there ought to be some way to work this out. But when it got to that next level or to Jackson Graham, it was always, “I’m not going to give those sons-of-bitches anything.” I don’t know. They never said that, until -- I lost the time.

I have no memory as to the time, but it was after they had setback after setback. I said to Pete Young, “[unclear] speak to lawyers, but I guess I can say this to you.” I said to Ciano [phonetic] -- there was another firm that was -- he was staff lawyer. There was another firm that had been hired for this -- they may have handled other things too, but they were hired initially when they found out that they were in trouble after the judge granted the initial injunction. So they came into the picture. I said, “Pete, I keep getting the impression that if the lawyers could be allowed to work this out that something could be worked out, but I have the feeling that

somebody well up in your organization, maybe Jackson Graham himself, and I guess that's why -- is just myopic. He doesn't think there are other considerations here, or at least doesn't think that they ought to be observed." I suggested this once before or a couple of times before. I said, "Here we go again. I'd like to get rid of this thing because it's taking a lot of my time and so forth." I said, "I once or twice before asked you why don't we set up a meeting with Jackson Graham so he will understand the conviction that we have, and we can indicate to him in no uncertain terms that he's got us to deal with and we're not going to go away." He said, "Let me see."

Lo and behold, he did get a meeting. Solstein and I and Howard, the three lawyers, went down and we assembled in the room with several of the staff counsel and these other people from a local law firm -- in a meeting room. We couldn't help commenting to ourselves later on -- it was like Jackson Graham wasn't going to come until everyone else was assembled, and then he would make his entrance. He made his entrance. So I

stood up [unclear]. I said, “How do you do, General. I’m Joseph Saunders, one of the attorneys.” He wouldn’t even shake my hand. He refused to shake my hand when I introduced myself and the other attorneys. [Laughter].

One of the -- somebody, maybe the Metro lawyer, said, “General, we set up this meeting because the question is where we go from here. These people, representing the plaintiffs, tell me that this isn’t going to go away, that they feel that the Authority has not tried to work something out sufficient that can be worked out to protect our interests as well as to” -- of course, they were under an injunction not to do any work on the A9 section. There are some interesting questions that I myself, as I look back, because the A9 section began down there where the Van Ness station is now. If we were going to -- if the Authority was going to consider other alignments -- which they did, I think three or four others, even including one up as far as Fessenden, I think -- and we made this point. With the A6, I think was the section number, already work being

done on the Van Ness station, it sure limited what the alternatives could be.

Schrag: Because of the angle that it would come out.

Saunders: Yes. So that was a worrisome thing. But they went ahead at their own risk. The injunction only applied -- but I felt that if push came to shove we could say, “Look, Your Honor, they’re under injunction not to do any work on this, and they, by going ahead with work on the other, were trying to defeat the situation which was intended with respect to the A9 section of where the location of the route should be,” and so on and so forth. I said, “If, by their action” -- anyway.

Graham said -- I know what it was. I had at one point said, “Would you consider putting the vent shafts up at Wisconsin and down at Connecticut?” Some of the staff people said, after thinking about it, “Yes. We ought to be able to do that.” One of the concerns that we had was if the -- it would not have been unreasonable or totally -- if they used Yuma Street route, we did not want to have -- and they were going to do the excavations

through the hole, through the vent shaft, so that's a hundred and ten feet of rock. We could see trucks at these entrances or holes, dust and dirt and rock and so forth, rumbling past the houses, causing vibrations in the homes and so on and so forth. So one of the things was to see what was the best deal we could get to let them go ahead but at the same time to protect us. I think their lawyers understood that we might be willing to make -- we never said, "This is what we are proposing." But we said, "Suppose." The engineers were there at this meeting. Jackson Graham said, "I don't understand that you're really offering us anything. You guys want it all your way." I said, "That's not quite true, General. Maybe you haven't been informed. For example, we don't want these shafts in our neighborhood where for two years -- that's the estimate we got -- you would be lifting the spoil out through the intended shaft hole, and our street would be mud and dirt for two years and tracking it into our homes and so forth and so on." We at one point said, "Hey, look, why don't we consider having the -- one of the things that

we might be able to work something out on -- and I didn't say it was the only thing -- have the shafts at Wisconsin and Connecticut Avenues where they're not right in front of homes and [unclear] homes." At that point Jackson Graham turned -- he was across the table -- to -- I forget his name, but anyway, one of the top engineering people -- he said, "What about that?" [Tape interruption].

Schrag: So Graham Jackson asked his engineers --

Saunders: Graham asked his engineers, "Well, what about that?" The engineer said, "Well, it can be done, but it's going to be costly." Graham said, "How much?" I don't remember how much he said. I don't think it was -- in my view, it would not have been prohibitive, considering the fact that they were losing money. Every day they delayed, the costs were going up and so on. He said, "How much?" The head of engineering said, "X dollars." Graham said, "No [unclear]." He didn't even say, "Let's think about that. I'd like to get your -- maybe we should talk about it later, or you give me a memo on that and so on,"

and indicate at least he was open to seeing what might be worked out.

He then said -- his mindset -- he said, “You residents up there in Northwest, you want privileged treatment. We’ve been building the subway down there on Potomac Avenue, and those people down there in those” -- they were at one time quite nice brick row houses, but the neighborhood was not what it used to be. It was, at the time I’m talking about, not what it used to be. They were doing construction by cut-and-cover. We drove down there and looked around, and it was just -- I guess we went down right after rain or something, but it was just a mess. We sure didn’t want that for Yuma Street, even for a distance of a couple of hundred feet where they would have to stage it. They put the barricades up. As far as we were concerned, for two years the Great Wall of China would exist out here because they were going to have to have room to stage the excavation and the loading of the trucks and keep their equipment and so on.

He said, “The people down in Potomac Avenue were much more willing to work something out on this.”

Well, what did they work out? They got cut-and-cover and then dirt and mud for two years. I don't know what he meant by "working out." He said, "You know, it's really" -- I forget the exact words. My recollection tells me that, in effect, he was calling us communists. He didn't use that word, but he indicated that we were, well, unpatriotic. That may have been it. He said, "You're unpatriotic," or, "You're not concerned with the rest of the public," or something and the additional costs that all this will add to the subway. Whatever he said was in that vein.

I was sitting nearest to him. I had done more of the speaking for the group. I looked at him. He was maybe where you are. I said, "General Graham, how can you speak like that? You realize that five federal judges have told you that you are violating the law? I don't know where you get the idea that somehow we're unpatriotic or unreasonable. The courts have said that what we have asked of WMATA is within the bounds of the law. You have been unwilling to make any concessions to see whether we could work

something out here. You want your plan and nothing but your plan." At that point he said, "Well, I guess the meeting is over." [Laughter].

Schrag: How long had it lasted? A couple [unclear]?

Saunders: Fifteen minutes at most. He was really pushing our patriotism and civil duties, civil obligations. So the meeting broke up. At that point, Ciano fell in beside me as we walked down the corridor. He said, "Joe, do you see what we've been putting up with all along?" I told him -- I said, "Pete, I figured that it must be at that level." He said, "We've tried to do things, come up with things that we think you would maybe agree to and get an okay from him to start negotiating along those lines, but he wouldn't see it."

I told you on the phone, I think -- did you see the article in the [Washington] Post about his interest in being an activist out in [unclear].

Schrag: Yes. He had been protesting the freeway himself.

Saunders: That's right. But the Post reporter -- this is the real interesting aspect. The Post reporter said, "General Graham, aren't you doing the same

thing that those people down in Washington on Yuma Street did, trying to either block or trying to get some changes made in the subway system? You're trying to get them made in the highway system." He said, "Oh, those people down there are a bunch of kooks." [Laughter].

Eventually, the lawyers did move Jackson Graham. I think Jackson Graham -- he was accustomed to people saluting and all this. We didn't salute, and we made it clear that we weren't going to salute according to his rubrics. I think that meeting really made him say -- or let them say to him -- "These guys are for real. They've been dogging us for two years now, and we're not getting anywhere." I'm just reading them into the situation. I don't know, maybe a couple of weeks later, overtures came.

Realistically -- I think I was realistic -- Graham never would have admitted this -- but I could see that with UDC [University of the District of Columbia] there was a public interest in having a station close by. Less so at Tenleytown. It could have been moved further down. At one point we urged that it be run

through the park over there, but that would have moved the station on Wisconsin Avenue maybe down to Fessenden Street. Well, that was feasible, but it was not as desirable as having one up here at Albermarle Street. So the question really came down to -- and I think that this is something that we would have settled right from the beginning, but they played hardball, and we did too. Eventually --

Schrag: Sorry. So you thought that from the beginning the Yuma Street alignment itself --

Saunders: I could see where there was some merit to it. I argued, and I still think, that there were alternatives, maybe not as good. But one alternative of taking it underneath a park as against four or five blocks of homes is not -- that degradation of the environment ought not to be taken lightly. But I could understand that, in making the suggestion, the recommendation for a station at Tenleytown and then one down there -- that they were not cockamamie. I think, whatever else maybe you said, and maybe Jackson Graham wouldn’t agree, obviously, that we had

always been realistic. But they were playing hardball. They lied to us to begin with, and other things happened which didn't give us great confidence.

So finally we figured, look, maybe we can work up a settlement here that they would agree to. What we came up with was the alignment under Yuma Street with the stations at the two locations, but there would be no visible fan or vent shafts in the neighborhood. No trees would be torn down. One shaft would be built at Reno and Yuma. We even took care -- this all probably could have been worked out. We were realistic, I think. We even went so far -- well, the Authority said, "That's a home there on that lot you're talking about." I said, "If something can be worked out here, maybe we can solve that problem too." The same thing up here at 38th and Yuma. When we finally got agreement -- [unclear], for example -- the neighborhood had for years wanted to get the bus route which had come out at one point -- the cross-town bus route -- off of Yuma Street. That was within WMATA's authority now. So we threw that into the mix. They agreed to re-route

that bus so there would be no buses on Yuma Street, as a sort of stop to -- we were accepting some hardships and whatnot.

We got the residents of both of those properties to agree to move so that the vent shafts could be built on their properties. But we told Metro that that's going to depend upon a good price, a good price for the properties. I had nothing to do with the pricing or anything, but Metro made an interesting offer to them once we got to working this out. Metro made offers to both of these people, which they willingly accepted. In fact, the woman down here -- she has grown children -- but every time I see her, and I do see her once in a while, she refers back to this when the thing was all settled. She came up with a bottle of liquor and said, "I'm glad this is all over. I'm glad this is all over." She moved down to Chesapeake or Cumberland Street into a much larger house, so she was getting an upgrade. [Laughter]. It was part of the deal. Same thing up here.

So now if you go through this neighborhood now, you really would not be aware. All of the spoil

was taken out. They cut away at the shaft down below, working their way up and carrying out the spoil to Van Ness or Tenleytown.

Schrag: So you didn't have the trucks.

Saunders: There was no digging down. Obviously, in the final stage when they reached near the surface and had to pour the concrete and things. But a minimum of truck traffic. They planted the bushes over there and they tended to come over every month or so and cut the bushes [unclear] for them.

Schrag: They still do that? Is that still WMATA property around --

Saunders: Yes. They put new azalea bushes in on the one at 38th. Maybe by now the terrors of Yuma Street are not familiar to the people who -- probably the people we were dealing with have since long gone. But they did it. They faithfully come and trim the bushes and cut the lawn and so on and so forth. Where you go if you really want to get a feel for it, just go up there to [unclear] -- a few steps to walk there and down here too.

Schrag: In a minute, yes.

Saunders: We were not without some effect. In the blasting and whatever they did down at the track level, there were vibrations. Some people -- some more than others -- got cracks. So we were not off-base when we said, “This is going to have effects.” It might have been much worse with trucks prowling back and forth. So there was some of that. We got a minor crack along the front wall there. Some others had more. But in any event, eventually this all came out pretty much the way Metro wanted it, in the sense of being able to hook up a route here to the other two routes. Of course, we, I think, had applied for an injunction to prohibit them doing any construction up beyond [unclear] because, again, that would fix the route. We [unclear] with that.

The foolishness -- hindsight is always 20/20, they say. The foolishness, the lack of -- I’m looking for the word -- on the part of the Metro, Jackson Graham, I guess, also, doesn’t show on the streets and so forth here. It shows in the additional costs, because once they came under the injunction that settled this, they were

obligated to do that at every other not-yet-built [route].

Schrag: Do the alternatives analysis, the impact analysis.

Saunders: The impact analysis and public hearings based on that, yes. In this article in Railway Age -- "environmental studies jack up costs. Materials shortages and environmental impact studies had been contributing factors to the cost overrun. Concerning environmental impact studies, one WMATA spokesman says, 'We feel like we're inventing the wheel over again since we felt we had observed the intent and spirit of the laws with our environmental studies conducted back in the 50s and 60s.'" As if there could not have been changes. "Estimates of costs associated with this single Yuma Street delay are placed at $5 million. Another estimate from WMATA is that the construction delays and legal complications arising from all environmental impact studies, which they were obliged to make after this case established what they were obliged to do, may

total $250 million." Jackson Graham gambled $250 million of our money and lost.

Schrag: But that's exactly -- he understood the stakes. That's why he was so inflexible. He knew that this would set a precedent one way or another for all those unfinished routes.

Saunders: But then he should have hastened to the door and got going on it. I mean, at a certain point -- I'm sure that his lawyers were telling him by a certain date they ought to get [unclear] fixed at this point. "That is a losing cause, General, and the quicker we cut our losses, the better it's going to be for the whole Metro planning and expenditures."

Schrag: Let me see if there is anything we haven't covered, because that's quite thorough. Just to make sure I understand it, at one point you had brought up some very distant alignments, like up Bradley, to continue up Connecticut Avenue all the way to Bradley Boulevard.

Saunders: I don't think so. I think the further we -- now, maybe others did. But, if I may say so, we tried to be realistic. Obviously, at some point

they’re beginning to stretch. We put up suggested alignments under Albermarle and eventually up to one that was largely under the park up there.

Schrag: Fort Reno [Park].

Saunders: Up around Fessenden Street, yes.

Schrag: But that was as far as you were demanding.

Saunders: That’s right.

Schrag: Again, I might have it [unclear].

Saunders: [unclear] eventually connected up over somewhere on Wisconsin Avenue.

Schrag: So you knew that there would be a Friendship Heights Station.

Saunders: Yes. We assumed that, but the question was where.

Schrag: Then you were even willing to consider the Yuma alignment, it was just a question of what mitigating factors would be put in.

Saunders: Eventually it came down to that, and Metro finally saw, in its wisdom, that we weren’t asking for the moon.

Schrag: You're asking for azalea bushes, floating slabs [phonetic] on the track.

Saunders: That was there from the beginning. They had said they would provide that. That was a very early --

Schrag: Concession?

Saunders: Not even a concession. They may have said, "Hey, look, we're working on this. We're going to protect you." I think they may have said, without being noted, "We're going to put floating slab." I know that Murray Strassberg thought this, that floating slabs weren't going to be all that helpful. But in fairness to Metro, I think they adopted that idea pretty early on. It was easy to do.

Schrag: Okay. I mean, the engineers believe that ninety feet underground in hard rock, you're not going to hear it [and] you don't need floating slabs.

Saunders: We do not -- I'll be honest with you -- I do not hear train operations, but we didn't know until they began whether or not that would be the case. We had to take something on faith there.

Schrag: And because trust had been spoiled so early, that's why each step of this --

Saunders: Yes.

Schrag: Let me just ask you -- the reason this is so important, not just to Metro but to the big picture history of engineering really, is that this is the way that most things work out these days is a lot of deference to local concerns. There has been a fundamental change in the culture of engineers. There are no Jackson Grahams left who would just dismiss citizen concerns that way. Some people think this is democracy, and others call it NIMBYism. Maybe those are two words for the same thing.

Saunders: What was the first?

Schrag: Well, some call it democracy and others call it NIMBY -- Not In My Back Yard, or not under my back yard in the case of subway construction. Just how do you -- where do you come down on this issue? Do you think that --

Saunders: The planners had to make decisions, and they had to proceed to do so because otherwise -- hooking one section to another and eventually getting to

Rockville or wherever, that's got to be planned well in advance. Here, number one, the Authority just lied to us. They just absolutely lied. That, as you a moment ago suggested, we had no real trust in them from then on. When we did suggest that we might be willing, if we did this and this and this and this, they regarded us as being too demanding, I guess. I guess they may always have been looking at what was going to happen in the next section. But if they're going to run into people as persistent and defensive as we were, then they might as well deal with that at the beginning.

Schrag: Okay. I think there's a couple of follow-up questions that we didn't get to. Did you have any contact with other neighborhoods going through the same thing, because I know --

Saunders: No.

Schrag: Okay. Because by '75 or so, it's in Takoma Park, it's along the Glenmont line, Forest Glen. There are a number of similar questions there. It's more about what will be built on the surface,

parking lots, that kind of thing. I didn't know if it became a network of activists.

Saunders: No. An activist in Maryland by the name of Robert Thicker -- he's sort of regarded, I gather, as a guy who is kind of off, has flipped a little bit. But he's been always running for elective positions in the county, and he picked up on this at one point in connection with something they were doing out there. He got in touch with me, and I told him what we were doing or whatever the stage of things were at that time and that that's where we were. I think he tried to do something, but then I lost track of that. Other than that, no, we were not contacted.

Schrag: So just on your own and then it turned into this thing. Okay. I think that's all I have unless you have anything to add.

Saunders: No.

Schrag: You tell such wonderful stories that I just had to let you go and got all the information I needed. I'll stop the tape now then.

[End of Interview]

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